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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,297	09/08/2003	Richard B. Klein	LYNK.107727	9739

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,297

Applicant(s)

KLEIN ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12-15-2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Abstract

Applicant is reminded of the proper content of an abstract of the disclosure. The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art, as in lines 5-7.

Specification

The disclosure is objected to because of the following informalities:

In line 2 of paragraph [0002], --now U.S. Patent No. 6,637,603,-- should be inserted before "which".

In line 3 of paragraph [0002], "09/641,794, filed August 19, 1999" should be changed to --09/641,323, filed August 18, 2000--. Note the declaration and U.S. Patent No. 6,533,127.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention since the limitation "said horizontal barrier arm", in line 3, lacks proper antecedent

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basis in the claim (see line 9 of claim 1 for reference). *To correct this*, it appears that "horizontal" should be deleted from line 3 of claim 2.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,090,108 (Cicero '108).

Cicero '108 discloses a shoe rack hanging on an upright surface, such as a wall, and the rack is for holding shoes whereby the shoe rack comprises first (left side of Figure 1) and second (right side of Figure 1) opposed side frame members with each side frame member having a main body section (1) and a plurality of arms (6) projecting outwardly therefrom; each support arm (6) has a distal end (at 11) displaced from the side frame members; a plurality of shoe retaining bars (7 and 9) extending between the side frame members and are oriented in pairs (top half of Figure 1 is a first and bottom half of Figure 1 is a second pair) a side barrier arm (5) projects outwardly from the main body section (1) and each side barrier arm (5) has a distal end (at 11) displaced from the side frame members wherein each side barrier arm (5) is angled, i.e., upwardly towards the main body section, such that a distal end (at 11) of the barrier arm (5) is coupled to the distal end (at 11) of the corresponding support arm (6) so that the barrier arms (5) act as a lateral barrier against movement of shoes placed on the bars (7, 9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cicero '108 as applied to claim 1 above, and further in view of U.S. Patent No. 913,228 (McCarthy '228).

Cicero '108 discloses the shoe rack as advanced above.

The claim differs from Cicero '108 in requiring the main body section to be positioned in a spatially removed manner from the upright surface.

McCarthy '228 teaches that it old to have a rack having side frame members with a main body section that is spaced from the upright surface to which it is attached.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Cicero '108 with the main body section spaced from the upright surface, as taught by McCarthy '228, for ease in use, since shows placed therein would not interfere with the upright surface.

Comments

Clarification is respectfully requested as to whether applicant is intending to positively claim "an upright surface" in claim 1 (note also claim 2, line 2). Note the positive recitation "hanging" in line 1 of claim 1 as opposed to "for hanging" which is a functional recitation. It is noted that the claims have been examined as though an upright surface is part of the invention.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Examiner
Art Unit 3634

Jennifer E. Novosad/jen
July 22, 2004